

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

W. H. SCHAUM
AND
ELIZABETH H. SCHAUM

Claim No. CU-2331

Decision No. CU-

4252

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$61,019.57, was presented by W. H. SCHAUM AND ELIZABETH H. SCHAUM based upon the loss of certain personal property in Cuba. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Commission finds on the basis of the evidence of record that claimants, husband and wife, jointly owned certain items of personal property in Cuba. The details thereof as well as the taking of the properties are discussed hereafter under the headings of the properties to which they relate.

Claimants have computed their claim as follows:

Household furniture and personal effects	\$10,671.78
Livestock	12,225.00
2 saddles, bridles and saddle pads	100.00
Savings account(ELIZABETH H. SCHAUM)	5,000.00
Savings account(WILLIAM H. SCHAUM)	4,000.00
Checking account(WILLIAM H. SCHAUM)	13.79
Loan to the American Club, Havana	3,750.00
Loan to G. S. Gianelloni	5,800.00
170 shares of stock in Iberia Machinery Company, S.A.	17,000.00
5,000 shares of stock in Interamerican Uranium	109.00
14 foot rowboat & 10 HP Motor	300.00
2 shotguns	150.00
Deposit bond on automobile	<u>1,900.00</u>
Total	<u>\$61,019.57</u>

Household Furniture and Personal Effects

The record shows that Mr. SCHAUM was President of the Punta Alegre Sugar Corporation in Cuba, and lived in a home belonging to that corporation. Claimants' household furniture and personal effects were situated in that home.

On August 6, 1960, the Government of Cuba published Resolution 1, pursuant to Law 851, which listed as nationalized Punta Alegre Sugar Corporation. It further appears from the evidence of record that all of that corporation's properties, including the home in which claimants resided, were taken by the Government of Cuba on August 6, 1960. The Commission finds that claimants' household furniture and personal effects were taken on August 6, 1960.

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The evidence includes a detailed list of these items of property and evaluations for each item, submitted to the Department of State under date of October 7, 1961, and an affidavit from the former President of an insurance brokerage concern in Cuba, dated December 7, 1964, indicating that an inventory of claimants' household properties had been prepared as of July 1, 1960 for insurance purposes.

On the basis of the foregoing, the Commission finds that the aggregate value of claimants' household furniture and personal effects on August 6, 1960, the date of loss, was \$10,621.78.

Livestock and Related Property

The Commission finds on the basis of the evidence of record that claimants owned livestock, saddles and related property which they maintained on a farm in Camaguey Province, Cuba.

Claimants state that after they left Cuba (in 1960) they attempted to arrange for the continued care of their livestock, but learned that in January 1961 the National Agrarian Reform Institute, which was authorized to expropriate rural properties pursuant to the Agrarian Reform Law of 1959, had taken their livestock. In the absence of evidence to the contrary, the Commission finds that claimants' livestock, saddles and related property were taken by the Government of Cuba on January 15, 1961 pursuant to the Agrarian Reform Law of 1959. (See Claim of Council Bluffs Savings Bank, Claim No. CU-1290.)

The evidence includes detailed listings of said properties and the appraised values thereof, prepared in 1960. On the basis of the entire record, the Commission finds that on January 15, 1961, the date of loss, claimants' livestock had a value of \$12,225.00, and their saddles and related property had a value of \$100.00.

Bank Accounts

Claimants assert the loss of three bank accounts in Cuba; namely, two savings accounts with balances of \$5,000.00 and \$4,000.00, respectively, the Cuban peso being on a par with the United States dollar, and a checking account with a small balance. The record contains an affidavit, dated December 3, 1967, from Mr. Philip Hugh Eaton, the former Manager of the Royal

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Bank of Canada, Havana Branch, corroborating claimants' statements. Mr. Eaton stated that prior to the time in 1960 when Cuba took over control of his bank claimants opened two individual savings accounts in the bank with several thousand dollars in each account. It further appears from a bank statement that claimants' checking account had a credit balance of \$10.39 as of November 27, 1961.

On the basis of the foregoing evidence, the Commission finds that claimants owned three bank accounts in Cuba, having the equivalent values of \$9,000.00 for the two savings accounts and \$10.39 for the checking account.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected a confiscation of all goods and chattels, rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The Commission finds that this law applied to claimants who had left Cuba prior to that date, and that their three bank accounts were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

The Commission finds that the aggregate value of claimants' three bank accounts on December 6, 1961, the date of loss, was \$9,010.39.

Loan to the American Club, Havana

Claimants assert a loss based upon a loan to the American Club, Havana, in the aggregate amount of \$3,750.00. According to claimants' statements of October 31, 1969, the American Club is a non-profit American organization in Havana.

Section 505(a) of the Act provides that a claim for a debt owing by an American entity "shall be considered only when such debt" was a charge on property taken by the Government of Cuba. On the basis of the evidence of record and in the absence of evidence to the contrary, the Commission finds that the loan was not secured by any property taken by Cuba within the meaning of Title V of the Act. Accordingly, this portion of the claim is denied. (See Claim of Anaconda American Brass Co., Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

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Loan to Giles S. Gianelloni

Claimants assert that they loaned a sum of money to Mr. Giles S. Gianelloni to retire a mortgage on his home. However, claimants had no mortgage or lien on Mr. Gianelloni's property, but were unsecured creditors. They assert they suffered a loss when Mr. Gianelloni's home was taken by Cuba.

The Commission however, finds no valid basis for concluding that the taking of Mr. Gianelloni's property constituted a loss to claimants within the meaning of Title V of the Act. While claimants may have suffered a loss, it was not a loss resulting from the nationalization or other taking of their property by the Government of Cuba. Accordingly, this portion of the claim is denied.

Stock Interests

1. Iberia Machinery Company, S.A.

Based on the evidence of record, including evidence in related claims, the Commission finds that claimants owned 170 shares of stock in Iberia Machinery Company, S.A., a Cuban corporation.

In the Claim of Raphael Katzen Associates International, Inc., Claim No. CU-0660, the Commission found that the Iberia Machinery Company, S.A. was nationalized by the Government of Cuba on October 24, 1960, by Resolution 3 pursuant to Law 851, and that one share of stock in said company on the date of loss had a value of \$142.9603.

Accordingly, the Commission finds that claimants' 170 shares of stock in that company had a value of \$24,303.25 on October 24, 1960, the date of loss.

2. Interamerican Uranium

Claimants assert that they owned 5,000 shares of stock in Interamerican Uranium, which had cost \$109.00. However, no evidence whatsoever has been submitted in support of that assertion.

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The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission finds that claimants have failed to meet the burden of proof with respect to the portion of their claim based upon 5,000 shares of stock in Interamerican Uranium. Accordingly, this portion of the claim is denied.

Rowboat and Shotguns

The Commission finds that claimants owned a rowboat with an outboard motor and 2 shotguns, which they maintained at Boca Grande Province, Cuba. The Commission further finds that said property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, and that the properties had an aggregate value of \$450.00 on that date.

Automobile Bond

The record shows that in order to take their automobile out of Cuba in 1960, claimants were required by Cuban authorities to deposit a bond for \$1,900.00, approximating the value of the automobile. The purpose of the bond was to guarantee that the automobile would be returned to Cuba. Conditions in Cuba militated against returning the vehicle, and on February 28, 1961 the bond was forfeited to Cuban authorities. Subsequently, claimants paid \$1,900.00 to the bank that had posted the bond.

The Commission finds that these circumstances constituted a taking of property by the Government of Cuba within the meaning of Title V of the Act. The Commission further finds that the loss occurred on February 28, 1961, in the amount of \$1,900.00.

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Recapitulation

Claimants' losses within the purview of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Furniture and personal effects	August 6, 1960	\$10,621.78
Livestock and related property	January 15, 1961	12,325.00
Bank accounts	December 6, 1961	9,010.39
Iberia Machinery Company, S.A.	October 24, 1960	24,303.25
Rowboat and Shotguns	December 6, 1961	450.00
Automobile bond	February 8, 1961	<u>1,900.00</u>
	Total	<u>\$58,610.42</u>

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$10,621.78
October 24, 1960	24,303.25
January 15, 1961	12,325.00
February 28, 1961	1,900.00
December 6, 1961	<u>9,460.39</u>
Total	<u>\$58,610.42</u>

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CERTIFICATION OF LOSS

The Commission certifies that W. H. SCHAUM AND ELIZABETH H. SCHAUM jointly suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-Eight Thousand Six Hundred Ten Dollars and Forty-Two Cents (\$58,610.42) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

DEC 10 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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